

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SHARON MARIE REED,

Plaintiff,

vs.

CITY OF SAN DIEGO; COUNTY OF SAN  
DIEGO; SAN DIEGO UNIFIED PORT  
DISTRICT; OFFICER CARLOS OLGUIN;  
SAN DIEGO HARBOR POLICE  
DEPARTMENT; and STATE OF  
CALIFORNIA,

Defendants.

CASE NO. 06cv2724 JM(WMc)

ORDER GRANTING MOTION TO  
DISMISS SECOND AMENDED  
COMPLAINT WITH PREJUDICE

Defendants San Diego Unified Port District and Officer Carlos Olguin (collectively "Defendants"), the only remaining defendants in this action, move to dismiss the Second Amended Complaint ("SAC"). Plaintiff opposes the dismissal of her civil rights complaint brought pursuant to 42 U.S.C. §1983. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument. For the reasons set forth below, the motion to dismiss the 42 U.S.C. §1983 claim is granted with prejudice and the court declines to exercise supplemental jurisdiction over the state law claims for assault and battery, false arrest and imprisonment, and negligence. The Clerk of Court is instructed to close this file.

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## BACKGROUND

On December 15, 2006 Plaintiff commenced this civil rights action alleging that she was wrongfully arrested on a warrant issued in the name of Colleen Ann Conerty, not Sharon Marie Reed. (SAC ¶11). Plaintiff was placed under arrest on December 18, 2005 when a records check of a California D.O.J. database revealed that Plaintiff's name was identified as an alias used by Colleen Ann Conerty. When arrested she repeatedly told the San Diego Harbor Police Department and the arresting officer that she was Sharon Marie Reed but the "Harbor Police did not listen to her." (SAC ¶10). She showed the Harbor Police her passport and other identification verifying her identity as Reed, but no effort was made to "verify her identify and she was arrested and jailed at the Los Colinas Jail for nearly eight hours." Id.

Plaintiff alleges that Harbor Police Officer Carlos Olguin "was negligent, that she was arrested without cause, that the officer was improperly trained or supervised, her civil rights were violated, she was falsely imprisoned and battered." (SAC ¶14). Plaintiff also alleges that Officer Olguin was following the customs and practices of the San Diego Sheriff's Department "to arrest individuals by using improper means, including the use of excessive force, even when no reasonable basis exists for believing that use of force would be required. Said policy, pattern, practice, and custom amounted to deliberate indifference to Plaintiff's constitutional and statutory rights and the policy was the moving force behind the deprivation of Plaintiff's rights. (SAC ¶16). Plaintiff also alleges that each Defendant "maintain[s] an official policy, custom or practice of issuing facially invalid arrest warrants without taking proper steps, if any, to ensure that the particular person in custody was actually the person sought." (SAC ¶18). Based upon these generally described events, Plaintiff alleges four causes of action for (1) violation of the Fourth and Fourteenth Amendments when she was arrested on the warrant, (2) assault and battery, (3) false arrest and imprisonment and (4) negligence.

On March 23, 2007 this court granted the State of California's motion to dismiss

1 the Complaint on Eleventh Amendment grounds. On April 24, 2007 this court granted  
 2 County's motion to dismiss the original complaint, with leave to amend. On June 28,  
 3 2007, the court once again granted defendants motion to dismiss the first amended  
 4 complaint, with leave to amend. On August 13, 2007 the court granted the parties  
 5 stipulated dismissal of the County of San Diego. San Diego Unified Port District and  
 6 Officer Olguin, the only remaining Defendants, now move to dismiss the complaint on  
 7 the ground that Plaintiff fails to state a claim under 42 U.S.C. §1983. Plaintiff concedes  
 8 that dismissal of the excessive force claim is appropriate.

## 9 DISCUSSION

### 10 Legal Standards

11 Federal Rule of Civil Procedure 12(b)(6) dismissal is proper only in  
 12 "extraordinary" cases. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir.  
 13 1981). Courts should grant 12(b)(6) relief only where a plaintiff's complaint lacks a  
 14 "cognizable legal theory" or sufficient facts to support a cognizable legal theory. See  
 15 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). While a  
 16 complaint challenged under Rule 12(b)(6) need not set forth detailed factual allegations,  
 17 a plaintiff must provide sufficiently detailed allegations to "raise a right to relief above  
 18 the speculative level." Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1965 (2007).  
 19 Identified grounds for relief must set forth "more than labels and conclusions, and a  
 20 formulaic recitation of the elements of a cause of action will not do." Id. The defect  
 21 must appear on the face of the complaint itself. Thus, courts may not consider  
 22 extraneous material in testing its legal adequacy. See Levine v. Diamantheset, Inc., 950  
 23 F.2d 1478, 1482 (9th Cir. 1991). The courts may, however, consider material properly  
 24 submitted as part of the complaint. See Hal Roach Studios, Inc. v. Richard Feiner and  
 25 Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1989).

26 Finally, courts must construe the complaint in the light most favorable to the  
 27 plaintiff. See Concha v. London, 62 F.3d 1493, 1500 (9th Cir. 1995), cert. dismissed,  
 28 116 S. Ct. 1710 (1996). Accordingly, courts must accept as true all material allegations

1 in the complaint, as well as reasonable inferences to be drawn from them. See Holden  
 2 v. Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992). However, conclusory allegations  
 3 of law and unwarranted inferences are insufficient to defeat a Rule 12(b)(6) motion.  
 4 See In Re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

### 5 **The Motion**

6 Under 42 U.S.C. §1983 civil liability may be imposed on any person who, under  
 7 color of state law, subjects another to the deprivation of rights “secured by the  
 8 constitution and laws.” 42 U.S.C. §1983. Plaintiff contends that her arrest and  
 9 detention for approximately eight hours violated her fourth and fourteenth amendment  
 10 rights. The court concludes that Plaintiff’s brief detention based upon Officer Olguin’s  
 11 misidentification of Plaintiff as Colleen Ann Conerty fails to state a claim under 42  
 12 U.S.C. §1983.

13 As set forth in previous court orders, incorporated herein, Plaintiff must comply  
 14 with the requirements of Baker v. McCollan, 443 U.S. 137 (1979) in stating a false  
 15 arrest/detention claim based upon misidentification. As noted by the Defendants,  
 16 Plaintiff fails to state a claim against them because she fails to adequately allege that  
 17 Officer Olguin violated her constitutional rights – under either the Fourth Amendment  
 18 or the due process clause of the Fourteenth Amendment. In Baker, 443 U.S. 137  
 19 (1979), as here, an individual was arrested pursuant to a warrant in the mistaken belief  
 20 that plaintiff was the person identified in the warrant. The individual was imprisoned  
 21 for 72 hours over a holiday weekend. When county officials learned of the mistaken  
 22 identify, the individual was released from custody. The individual then commenced a  
 23 §1983 action against the county. The Supreme Court noted that §1983 “imposes  
 24 liability for violations of rights protected by the Constitution, not for violations of duties  
 25 of care arising out of tort law.” Id. at 146. The court held that the deprivation of liberty  
 26 suffered by McCollan did not violate a constitutional right, explaining that

27 [a] reasonable division of functions between law enforcement officers,  
 28 committing magistrates, and judicial officers -- all of whom may be  
 potential defendants in a §1983 action -- is entirely consistent with ‘due  
 process of law.’ Given the requirements that arrest be made only on

1       probable cause and that one detained be accorded a speedy trial, we do not  
 2       think a sheriff executing an arrest warrant is required by the Constitution  
 3       to investigate independently every claim of innocence, whether the claim  
 4       is based on mistaken identity or a defense such as lack of requisite intent.  
 Nor is the official charged with maintaining custody of the accused named  
 in the warrant required by the Constitution to perform an error-free  
 investigation of such a claim.

5       Id. at 145-46.

6       To the extent Plaintiff continues to assert a due process liberty claim based upon  
 7       her continued detention after her misidentification, the Supreme Court noted in Baker  
 8       that “mere detention pursuant to a valid warrant but in the face of repeated protests of  
 9       innocence will after the lapse of a certain amount of time deprive the accused of ‘liberty  
 10      . . . with the due process of law.’” Id. at 145. The Supreme Court noted that a “detention  
 11      of three days over a New Year’s weekend does not and could not amount to such a  
 12      deprivation.” Id. Here, the court dismissed the original and first amended complaints  
 13      on the ground that the pleadings were silent on the length of Plaintiff’s detention and  
 14      circumstances surrounding her arrest and detention. Following her arrest on a facially  
 15      valid warrant, the SAC alleges that Plaintiff was detained for a period of 8 hours. (SAC  
 16      ¶10). This brief period of detention, during which time Plaintiff’s actual identity was  
 17      confirmed, does not constitute a constitutional deprivation as a matter of law.<sup>1</sup>

18      Defendant contends that the warrant was invalid on its face as the person  
 19      identified therein was not Plaintiff. The difficulty with this argument is that Plaintiff’s  
 20      name appeared as a a.k.a. for Colleen Ann Conerty. (SAC ¶8). The warrant appeared  
 21      facially valid.<sup>2</sup> This is a case of misidentification, not one of lack of probable cause or  
 22      other facial defect. Defendant also argues that this court should follow Lee v. City of  
 23      Los Angeles, 250 F.3d 668 (9<sup>th</sup> Cir. 2001) and permit this action to proceed. There,  
 24      plaintiff Kerry Sanders, a mentally disabled individual, was arrested by the LAPD. The

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26      <sup>1</sup> Plaintiff also argues that the warrant was invalid on its face because the individual identified,  
 27      Colleen Ann Conerty, was not Plaintiff. This argument misses the mark as it fails to address that  
 Plaintiff was identified as an a.k.a. for Colleen Ann Conerty.


28      <sup>2</sup> The court notes that the warrant appears to have issued in compliance with California Civil  
 Code §43.55(b).

1 LAPD had mistakenly identified the plaintiff as a fugitive from New York State named  
2 Robert Sanders. The LAPD “failed to take proper steps to verify that the individual in  
3 their custody was in fact Robert Sanders.” Id. at 688. Without identifying his true  
4 identity, plaintiff was extradited to New York where he was sexually molested by other  
5 inmates while incarcerated. The plaintiff’s mother contacted the LAPD on numerous  
6 occasions and was informed that the whereabouts of her son, Kerry Sanders, was  
7 unknown. Two years later the real Robert Sanders was arrested and it was discovered  
8 then that the individual who had been detained for over two years was not Robert  
9 Sanders. Lee is factually dissimilar on one key point made in Baker v. McCollan – the  
10 officials in Lee did not take any steps to confirm plaintiff’s identity for over two years.  
11 Here, in contrast, the officials confirmed Plaintiff’s identity and released her within  
12 eight hours of her arrest. Consequently, Lee is not persuasive.

13 In sum, the court grants the motion to dismiss the 42 U.S.C. §1983 claim with  
14 prejudice as there appears to be no circumstances under which Plaintiff can state a  
15 claim. The court also declines to exercise supplemental jurisdiction over Plaintiff’s  
16 assault and battery, false imprisonment, and negligence claims. These state law claims  
17 are dismissed without prejudice.

18 **IT IS SO ORDERED.**

19 DATED: November 1, 2007

20   
21 Hon. Jeffrey T. Miller  
22 United States District Judge

23 cc: All parties  
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